

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

IN THE INTEREST OF: K.A.R.

**v.
JUVENILE OFFICER**

APPELLANT,

RESPONDENT.

DOCKET NUMBER WD76169

DATE: October 29, 2013

Appeal From:

Jackson County Circuit Court
The Honorable Justine E. Del Muro, Judge

Appellate Judges:

Division Four: James E. Welsh, Chief Judge, Presiding, Alok Ahuja, Judge and Cynthia L. Martin, Judge

Attorneys:

Sara Johnston and Loretta Burns-Becklew, Kansas City, MO, for appellant.

Daniel C. Berezoski and Edward E. Moore, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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Before Division Four: James E. Welsh, Chief Judge, Presiding, Alok Ahuja, Judge and
Cynthia L. Martin, Judge

K.A.R., a juvenile, appeals from the trial court's judgment sustaining the Juvenile Officer's second amended petition, which alleged that K.A.R. committed acts which would constitute the crime of statutory sodomy in the first degree if committed by an adult. On appeal, K.A.R. claims that the trial court (1) abused its discretion in admitting, and, thus, implicitly finding sufficient indicia of reliability of the Victim's prior out-of-court statements under section 491.075 because the time, content, and circumstances of the Victim's statements did not provide sufficient indicia of reliability and the trial court made no finding as to the reliability of the statements; and (2) erred in sustaining the Juvenile Officer's second amended petition as to the allegations of statutory sodomy in the first degree because there was insufficient evidence to prove beyond a reasonable doubt that K.A.R. had deviate sexual intercourse with the Victim.

AFFIRMED.

Division Four holds:

(1) Where a case is tried to the court, a formal hearing on the Victim's reliability is not required and neither are express findings. The trial court's reliability ruling is implicit in its admission of and reliance on the Victim's out-of-court statements.

(2) Substantial evidence supported finding that the Victim's out-of-court statements were spontaneous, consistent, timely, and made without motive to fabricate. K.A.R.'s assertions to the contrary were not supported by the evidence.

(3) Despite the Victim's recantation of his previous accusations of abuse at trial, evidence of the content of the Victim's out-of-court statements regarding the sexual abuse, evidence of the Victim's inappropriate sexual behavior and fear of K.A.R., and evidence of K.A.R.'s admitted addiction to child pornography was sufficient evidence from which the fact finder could have found K.A.R. guilty beyond a reasonable doubt of statutory sodomy in the first degree.

(4) The corroboration rule and the destructive contradictions doctrine have no application to K.A.R.'s claim of insufficient evidence. The corroboration rule is an exception to

the general rule that in sexual offense cases the victim's testimony alone is sufficient to sustain a conviction even if uncorroborated. This rule applies only to inconsistencies between the stated allegations and known physical facts, surrounding circumstances or common experiences. As K.A.R. complains only of inconsistencies between the Victim's prior out-of-court statements and his trial testimony and has not identified any aspect of the Victim's allegations in conflict with physical facts, surrounding circumstances, or common experiences, this rule does not apply. The destructive contradictions doctrine provides that a witness's testimony loses probative value when her statements at trial are so inconsistent, contradictory, and diametrically opposed to one another that they rob the testimony of all probative force. The destructive contradictions doctrine has no application when the inconsistencies are between trial testimony and pretrial statements as alleged by K.A.R.

Opinion by: Cynthia L. Martin, Judge

October 29, 2013

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